in the ordinance under consideration. In none of the cases was the ordinance declared void for unreasonableness, although it was inferentially conceded that a case might arise where the license fee would be so grossly disproportioned to the burden imposed upon the municipality in consequence of the election and maintenance of the poles and wires as to warrant the court in presuming that the ordinance was a revenue measure, not a police regulation. None of the cases laid down a fixed and invariable rule by which that question is to be determined, but, after a comparison of the facts developed on the trial of this case with the facts of some of the cases above cited, we have been led to the conclusion that the court would not have been justified by the precedents in declaring the ordinance void." See also *City of St. Louis* v. *W. U. Tel. Co.*, 148 U. S. 92, 149 U. S. 465.

BILLS OF LADING—BANKS—LIABILITY FOR BREACH OF SHIPPER'S WARRANTY.—Discussion of the ruling in *Finch* v. *Gregg* (N. C.), 49 L. R. A. 679, 6 VIRGINIA LAW REGISTER, 710, that an assignee of a bill of lading with draft attached, is held liable, if he receives payment of the draft, in an action for the return of the money, in case the property covered by the bill does not comply with the contract, has occupied at different times a score of pages of the REGISTER. On page 392, Vol. IV, favorable comment was made upon the case of *Landa* v. *Lattin* (Texas), 46 S. W. 48, following *Finch* v. *Gregg*. In the case of *Brinkley* v. *State Bank of Carlyle*, 6 VIRGINIA LAW REGISTER, 778, a contrary ruling of Judge Wm. B. Martin, of the Law and Chancery Court, of Norfolk, was reported in full, with an editorial note, withdrawing the previous approval of *Landa* v. *Lattin*, and expressing concurrence with the views of Judge Martin. This was followed in Vol. VII (p. 65) with a notice of *Talerton* v. *Bank* (Iowa), 50 L. R. A. 777, rejecting the doctrine of *Finch* v. *Gregg*.

The latest contribution to the subject is to be found in *Russell* v. *Smith Grain Co.* (June 16, 1902), 32 South. 287, in which the Supreme Court of Mississippi approved outright *Landa* v. *Lattin* and *Finch* v. *Gregg*, the opinion of the court consisting entirely, with the exception of two paragraphs, of a quotation from the opinion of the Texas court in the former case. It recognizes that "there are cases to the contrary of our view," but states that "they clearly fail to apprehend the true nature of the transaction;" that "they have dealt with half the transaction—not the whole of it. They have looked to the draft, not to the bill of lading."

With these conflicting views upon a subject of great interest in banking and mercantile circles, a statute or a decision of the Supreme Court of the United States, setting the matter at rest one way or the other, is a great desideratum. An attorney asked by a bank for advice as to whether it would be liable to a buyer for breach of its assignor's contract under circumstances like those mentioned, would be compelled to make the guarded reply. "It depends altogether upon the State to which the shipment is made. If it be to North Carolina, Mississippi or Texas, yes; if to Iowa, no."

CRIMINAL LAW—ARGUMENT OF COUNSEL.—In a prosecution for murder in a State where the jury are allowed to fix the penalty at death or imprisonment,

the prosecuting attorney used in substance the following language: "If there is a man on that jury who does not believe this man ought to be hung, then I say he is a weakling, not possessed of the proper manhood and unfit to sit on that jury." Counsel for accused objected to this language, but the trial court did not interfere or direct the jury to disregard it. *Held*, That failure so to do was proper cause for reversal. *State* v. *Blackman* (La.), 32 South. 334. Citing *State* v. *Thompson*, 156 La. 366; *Nelson* v. *Welch*, 115 Ind. 270.

Per Blanchard, J.:

"The language used was intemperate and improper. It was calculated to unduly influence the jury in deciding on the punishment to be inflicted on the guilty man—something with which the prosecuting officer has nothing to do. If they do not believe he should hang, the district attorney expresses his opinion of them in advance that they are weaklings. If they should reach, in their consultations in the jury room, the conclusion he should not be consigned to the gallows, they are, in anticipation, denounced by him who represents the State as without courage or manhood and unfit to discharge one of the most ordinary of the duties of citizenship. It was an appeal to the jury not merely to reach the conclusion of guilt which was proper, but an admonition to them that they would be recreant in their duty if they returned a qualified verdict, which under the law they had the right to do, and as to which they should have been left the sole judges, unbiased by the forcible assertion of the prosecutor's opinion. A district attorney should not throw the weight of his personal influence into a case which he is conducting as a public officer by announcing his individual opinion that the accused deserved hanging."

Where counsel, in arguing to the jury, made statements and suggestions to which exceptions were taken, but the court immediately corrected and rebuked the counsel, and instructed the jury to disregard the remarks, *Held*, That there is no ground for exception. If it was thought that the verdict was nevertheless influenced thereby, the trial court should have been moved to set it aside. *Lockwood* v. *Fletcher* (Vt.), 52 Atl. 119; citing *Machine Co.* v. *Holden*, 73 Vt. 396.

NEW TRIAL—MISCONDUCT OF JUROR—INTOXICATION.—The earlier rule that the intoxication of a juror to such an extent as to deprive him of the free and full exercise of his mental faculties vitiates the verdict, has been much relaxed by modern authorities.

"The correct rule, as voiced by the later decisions, may be stated, speaking generally, that the use of intoxicants by a juror while engaged in the trial of an action, to such an extent as to render him incapable of appreciating and comprehending the proceedings in court, and unfit for an intelligent, fair, and impartial performance of his duties, when not participated in, assented to, or waived by the parties, vitiates the verdict. Litigants are entitled to a trial by a jury of competent men, and when any one or more of them so far forgets the importance of his station and the responsibilities imposed upon him as to render himself unfit, by the use of intoxicating liquors, to intelligently hear and determine questions presented to him for consideration, the verdict rendered is invalid, and the courts uniformly vacate and set them aside, unless the conduct is waived by the parties, or it be made to appear that no prejudice resulted